

June 7, 1950

100-100000  
R. K. Trueblood, D.D.S., Secretary  
Arizona State Dental Board  
25 North Second Avenue  
Glendale, Arizona

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Dear Doctor Trueblood:

This is to acknowledge receipt of your letter of May 12, 1950, in which you ask our opinion as to whether certain examination fees, which have been accepted by the Dental Board and deposited with the State Treasurer, can be refunded out of that portion of the Dental Board Fund which has not been budgeted by the Legislature. For our delay in answering, which was due to pressing business in the office, we ask your pardon.

Under prior law the state auditor was authorized to make refunds of such fees out of the general fund. (Section 10-204, ACA 1939; Revised Code, 1928, Section 2617). However, this section has been repealed and no similar provision exists in the present financial code.

Therefore, we must determine whether the Board can make such a refund and in such determination we must find:

1. Whether the Board has authority to make such refunds in any event, and
2. Whether there is money appropriated for this purpose.

The statute providing for dental examination fees specifically prohibits a refund of same unless the applicant is ineligible or fails to comply with all the requirements, rules and regulations of the Board. (Section 67-918, ACA 1939, Laws, 1949, Chapter 29, Section 7). We assume from your letter that one of the requirements of the Board is that an applicant be personally present at the examination and that the applicants with whom we are concerned were unable to meet this requirement through no fault of their own. If this is true the prohibition against making refunds does not apply and we need determine only whether there is an appropriation from which the Board can make such payments.

The disposition of all monies collected by the Board is set out in Section 67-916, ACA 1939. This section, however, falls short of what is necessary to constitute an appropriation of such funds. It follows that the Board is governed by the financial code insofar as creating obliga-

R. K. Trueblood, D.D.S. Secretary  
Arizona State Dental Board

Page two  
June 7, 1950

tions or making expenditures of funds, which subject is dealt with in the following manner:

"No person shall incur, order or vote for the incurrence of any obligation against the state or for any expenditure not authorized by an appropriation and an allotment. Any obligation so raised in contravention of this act shall not be binding against the state but shall be null and void and incapable of ratification by any executive authority to give effect thereto against the state. But every person incurring, or ordering or voting for the incurrence of such obligations, and his bondsmen, shall be jointly and severally liable therefor. Every payment made in violation of the provisions of this act shall be deemed illegal, and every official authorizing or approving such payment, or taking part therein, and every person receiving such payment, or any part thereof, shall be jointly and severally liable to the state for the full amount so paid or received." Section 10-923, ACA 1939, (Laws of 1943, Chapter 86, Article III, Section 12.)

While it is undoubtedly true that this situation will create hardships in a few cases, the remedy is with the Legislature. It is our opinion that no examination fees can be refunded out of that portion of the Dental Board Fund which has not been budgeted by the Legislature in an appropriation act.

Trusting the foregoing satisfactorily answers your inquiry, we are

Very truly yours,

FRED O. WILSON  
Attorney General

WILBERT E. DOLPH, JR.  
Assistant Attorney General

WED:f